IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.342 OF 2005

Mr.Jayant P.Shidhaye ..Petitioner

Vs.

State of Maharashtra
and Ors. ..Respondents

....
Mr.P.K.Dhakephalkar with Ms.Manorama Mohanty i/b
M/s. S.K.Srivastava & Co. for Petitioner
Mr.Amit Desai with Ms.Shital Avhad i/b
M/s.Gagrat & Co. for Respondent no.2
Mr.Y.S.Shinde, A.P.P. for Respondent-State
....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 01.07.2005
DATE OF PRONOUNCING THE ORDER : 08.07.2005

P.C.

1. Heard the learned advocate for the petitioner-original accused no.5 and the learned advocate for the respondent no.1-original complainant.

2. The petitioner is seeking quashing of proceedings relating to C.R.C.No.1835/2001 pending

before the learned J.M.F.C. (M.V.) Court, Pune. In the said case the process was issued by the learned Magistrate under Section 138/141 of Negotiable Instruments Act.

3. Only one contention has been raised by the learned advocate for the petitioner i.e. at the time when the offence was committed the petitioner was not director of the company and thus he was not in charge of or responsible for the conduct of the business of the company at the relevant time. Reliance has been placed on form no.32 which is at Annexure-D to the petition to show that the petitioner was not the director of the company at the relevant time.

4. Reliance was placed by the learned advocate for the petitioner on a decision of a Single Judge of this Court in the case of **Madanlal Taparia Vs. Bank of Rajasthan; [2005(1) Bom.C.R. (Cri.) 177].** It was contended that therein it was held that merely because post dated cheques were issued when the petitioners were directors, they cannot be held responsible, hence, the proceedings were quashed.

I have perused the said decision. From the averments in para 5 thereof, it is crystal clear that the proceedings were quashed as on reading the complaint it was clear that the complainant therein was aware that the petitioners/accused were no longer directors of the accused company at the relevant time. However, on reading the complaint in the present case, it cannot be said that the present case stands on a similar footing, hence, the said decision would not be applicable to the facts of the present case.

5. In the present case it is an admitted fact that the cheque which has been dishonoured was issued in relation to the transaction which admittedly took place when the petitioner was director of the company. It is not disputed by the petitioner that the petitioner was not incharge of the day to day affairs of the company at that time. However, it is submitted that when the cause of action arose he had already resigned and therefore cannot be held liable. On the other hand, the learned advocate for Respondent no.1-complainant disputes that the petitioner was not responsible for the conduct of

the business when the offence was committed. It is submitted on behalf of the complainant that though the petitioner claims to have resigned on 10.4.1999, the certified copy of Form 32 is dated 24.1.2005, which raises doubt in the mind. Moreover, the Form 32 on which reliance is placed is missing in the ROC. Thus, in the present case, the respondent has disputed the genuineness of Form 32 on which reliance is placed by the petitioner. In my view when the complainant has disputed the factum of resignation, it becomes a triable issue and it cannot be decided without leading evidence.

6. In the case of **Raj Lakshmi Mills V.Shakti Bhakoo reported in (2002) 8 SCC 236,** the High Court had quashed the proceedings on the assumption that "X" was not in charge of or responsible for the conduct of business of the firm. The Supreme Court has observed that "We are of the opinion that at the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the accused was not responsible for the conduct of the business. On this ground alone, these appeals

are allowed and the impugned decision of the High Court is set aside".

7. Moreover, in the case of State of **M.P. Vs. Awadh Kishore Gupta & Ors. reported in (2004) 1 SCC 691,** the Supreme Court has observed that in the matters under Section 482 Cr.P.C., annexures to the petition cannot be termed as evidence without being tested and proved and hence, these annexures should not be acted upon by the High Court. So also, in the case of **Chand Dhawan V. Jawaharlal and Ors. reported in (1992) 3 SCC 317**, it has been held by the Supreme Court that the Court should not act on the annexures to the petition where the documents are not admitted or accepted by the complainant. In view of the facts of this case and the observations of the Supreme Court in the various decisions cited above, I am of the opinion that no reliance can be placed on the document annexed i.e. Form 32 at this stage.

8. Thus, in view of the decisions of the Supreme Court quoted above, in my view, at this stage, when the evidence has yet to be led, it would not be

proper to rely upon the annexures which have been annexed to the present petition. Thus, in view of the observations in the various decisions cited above and the facts of this case, I am of the opinion that no reliance can be placed on the documents which have been annexed to the petition. In this view of the matter, I find no merit in the petition and the same is dismissed.

[SMT.V.K.TAHILRAMANI,J.]